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7 Attorney for Plaintiff Michal Story

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 MICHAL STORY, an Individual,
11
12 Plaintiff,

13 vs.

14 DAVID CARLSON, an Individual and
15 FILM FOETUS, INC., and DOES 1
16 THROUGH 100

17
18 Defendants.

) Case No.: 21STCV29163

) JUDGE: Hon. Theresa M. Traber

) DECLARATION OF MICHAL STORY

) Date: December 3, 2021
) Time: 9:00 a.m.
) Dept.: 47

) Action Filed: August 6, 2021

) *Reservation IDs: 326394406716 &
865724959919*

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DECLARATION OF MICHAL STORY

I, Michal Story, declare that:

1. I am the plaintiff herein.

2. I have personal knowledge of each fact stated in this declaration and if called as a witness, I could and would testify competently thereto.

3. Joe Frank and I were married and were together for 17 years until he passed away in 2018.

4. I worked with Joe on the subject documentary, was a co-producer, own fifty percent (50%) of the documentary and jointly hold the copyright.

5. The declaration filed by defendant David Carlson is so extraordinarily fraught with lies, deceptions, misinformation and distortions so as to constitute a work of fiction.

6. The film is about Joe Frank as derived from his public radio shows and approximately 70 % of the film is in Joe's voice and likeness. The documentary was completed in 2017. The production agreement governing the parties' agreement gave Joe "final cut" which means he had total and complete control of the project.

Defendants' allegation that my lawsuit somehow impacts their constitutional rights ignores the fact that no additions to the film were to be permitted. Throughout his declaration, Carlson conflates production with post-production and conflates production with distribution and marketing of the film. Distribution has to do with generating sales and licensing or selling the product to secure revenues. Post-production is a process of editing the content, and editing the sound, adding music, whether original or licensed. It does not involve generating new content and precedes the final cut. Defendant states he is an award-winning film director implying that he put together this project. Mr. Carlson has won one award, it came from the Chicago Alt.Film festival in 1999. I have not heard of the Chicago Alt Film festival.

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1 7. Defendant Carlson, in his declaration, has numbered his allegations. I
2 herewith respond to those allegations and in order to avoid confusion and to facilitate
3 understanding, I will adopt his numbering from this point forward.

4 20. – 21. This film was not created and developed by Carlson. Rather, Joe Frank
5 did this in conjunction with Carlson. The qualities attributed by Carlson to himself
6 were in fact derived from the radio shows placed *into* the film in the voice and likeness
7 of Joe.

8 22. It is true that the documentary film features rare interviews with Joe’s
9 friends, actors, etc. each of whom comment upon and provide different perspectives
10 regarding Joe’s career as a performer on public radio. It is also true that the
11 documentary weaves stories together with a wide variety of Joe’s radio shows to reveal
12 his art, creative process, and personal life. The integration of Joe’s radio shows into the
13 film was a result of the interviews themselves. For defendant to state, in effect, that he
14 created the film is vainglorious, albeit false, to the extreme. Even if he did it preceded
15 the final cut.

16 24. The final cut was given on October 9, 2017. Defendant does not explain
17 his so-called post-production work. He does not explain what he did (*vis-à-vis* the
18 content of the documentary as distinguished from the business and financial aspect of
19 the documentary). Remarkably, Carlson states he “completed” the film in 2019. Apart
20 from the statement being unequivocally false, it is outrageous and nauseating. As
21 conceded by Carlson in ¶ 35 of his declaration, the film was completed by October 9,
22 2017, when Joe Frank gave final cut approval. Final cut approval means the film has
23 been *completed*. Production and post-production (the editing process) is finished.
24 Nothing further is to be done. The final cut was reposed in Joe. Anything done to the
25 film thereafter was gratuitous and in breach of contract. Carlson agrees. He screened
26 the documentary at a film festival in March, 2018 (after the death of Joe Frank). Any
27 *unilateral* work engaged in by Carlson after March, 2018, other than attempting to
28

1 generate revenues violates the parties' Production Agreement. Worse, it constitutes a
2 blatant attempt to fabricate a free speech issue.

3 32. The actual Certificate of Copyright was never provided. Only the
4 application was provided.

5 34. Here again Carlson misstates. Frank reviewed and provided notes on
6 every **cut of the film** and was contractually ordered Final Cut rights.

7 36. Joe Frank had a contractually conferred right of final cut [**exhibit 1** at 2(c)].
8 This means that he had the right or entitlement to determine the final version of the
9 picture. Defendant's declaration to the contrary is false. His "creative control" had to
10 do with distribution and exploitation of the film. Carlson is dismissive of Joe's unilateral
11 right to approve the final cut of the documentary by attempting to elevate his
12 distribution rights to embrace all creative decisions pertaining to content. What creative
13 decisions? Defendant makes no specific references to changes to the content of the
14 documentary because Joe's final cut would preclude that. If he did make changes to the
15 content after the final cut approval by Joe, such would be gratuitous, void of right, and
16 bereft of any input or contribution from Joe Frank or plaintiff. Carlson has engaged in a
17 fabrication of an anti-SLAPP claim.

18 37. – 38. These assertions are unequivocally false. Defendant had control over
19 distribution. But he did not fully apprise me, let alone meaningfully consult with me, at
20 any time.

21 42. *He concedes he has not consulted with me.* Updates are something different.

22 43. – 91. These paragraphs involve business related topics such as distribution,
23 budget updates, accounting issues, bank statements, sales reports and investors. Most
24 of the allegations are abjectly false. Defendant has multiple bank accounts to which
25 funds for the movie have transferred, but has not provided full and complete bank
26 statements. He alleges sales of only \$ 4,917 even though he depicts Joe Frank as a
27 national celebrity. Either the \$ 4,917 reflects a major under-statement of sales, or
28 defendants' attempt to elevate Joe is a ploy to attempt to invoke CCP § 425.16.

1 Budget updates have been inconsistent, contradictory, unreliable and not in conformity
2 with the production agreement. Carlson has acted as if he owns the film, can do
3 whatever he wishes, and does not have to consult with or report to me. He now
4 concedes for the first time that there was a \$ 75,000 investment. It was never accounted
5 for. Why not?

6 92. -196. With the exception of ¶ 166, these paragraphs address the complaint
7 and business and financial issues contained within the complaint. These paragraphs do
8 not address free speech or constitutional rights. Instead, they attempt to rebut the
9 allegations contained in the complaint. If defendant spent money on the project he was
10 contractually required to do so. Spending money is not an act of speech. Preparing
11 budgets is not an act of speech. Editing the film is not an act of speech. Distributing the
12 film is not an act of speech. Being a public figure, if Joe was that, is not an act of speech
13 and does not transform his radio show to defendant's act of speech. The unsavory
14 attempt by defendant to mutate Joe's radio show to something Carlson created is an
15 affront to the Court, let alone to my husband. It represents an attempt to fall within the
16 umbrella of free speech. Nothing was to be done after Joe approved the final cut.
17 Defendant was basically in charge of business—nothing more.

18 166. Very simply, my husband and I spent tens of thousands of hours on the
19 project from the time of its inception in 2010 through the final cut concluded in 2017.

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21
22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24
25 Executed on November 18, 2021, 2021 at Los Angeles, California.

26
27 /s/ Michal Story

executed page of declaration

From: Michal (michal@joe frank.com)

To: rross777@yahoo.com

Date: Thursday, November 18, 2021, 04:44 PM PST

1 Budget updates have been inconsistent, contradictory, unreliable and not in conformity
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25 Executed on Nov 18, 2021 at Los Angeles, California.

26 Michal Story
 27 Michal Story
 28

PROOF OF SERVICE

STATE OF CALIFORNIA)

) ss.

COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 424 South Beverly Drive, Beverly Hills, California, 90212.

On November 19, 2020, I served the foregoing document described as:

OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3, 6 AND 7 OF PLAINTIFF'S FIRST AMENDED COMPLAINT.

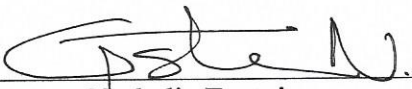
DECLARATION OF MICHAL STORY

BY ELECTRONIC FILING SERVICE PROVIDER NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court via ALSSI, a court-approved Electronic Filing Service Provider on the interested parties in this action:

Michael Trauben (CA-277557)
Singh Singh & Trauben LLP
mtrauben@singhtraubenlaw.com

Executed on November 19, 2020, 2020 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Nathalie Epstein